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No. 1345

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In the

Supreme Court of the United States

OCTOBER TERM, 1967

LLOYD EDWARDS, as Executor of the Will of Seren P. Hansen, Deceased,

Petitioner,

vs.

V. LEE PHILLIPS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BARNABAS F. SEARS
Counsel for Petitioner,
33 North La Salle Street
Chicago, Illinois 60602

THOMAS J. BOODELL
THOMAS EUGENE FOSTER

Of Counsel:
BOODELL, SEARS, SUGRUE & CROWLEY

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully asks that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit affirming the Judgment of the United States District Court for the District of Colorado.

OPINION BELOW

The opinion of the Court of Appeals is printed in the Appendix. It has not yet been officially reported. The unpublished memorandum and order of the District Court is also printed in the Appendix.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on February 27, 1967, and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

Whether the income of an estate payable to a Danish School District was to be used exclusively for educational purposes within the meaning of Section 642(c) of the Internal Revenue Code of 1954.

Whether the Danish School District, beneficiary under the Will of Seren P. Hansen, may be regarded as *any* corporation or association organized and operated exclusively for educational purposes within the meaning of Section 2055 (a) (2) of the Internal Revenue Code of 1954, or, in the alternative, whether the governing body of said School District may be considered trustees of property to be used exclusively for educational purposes within the meaning of Section 2055 (a) (3) of the Internal Revenue Code of 1954.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are Sections 642 (c) and 2055 (a) of the Internal Revenue Code of 1954. Section 642 (c) of the Internal Revenue Code of 1954 provides in part as follows:

> "In the case of an estate or trust • • • there shall be allowed as a deduction in computing its taxable income (in lieu of the deductions allowed by section 170 (a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument • • • is to be used exclusively for • • • educational purposes, • • •."

Section 2055 (a) on the Internal Revenue Code of 1954 provides in part as follows:

> "(a) In General—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devices, or transfers • • •
>
> (1) to or for the use of the United States, any State, Territory, and political subdivision thereof, or the District of Columbia, for exclusively public purposes;
>
> (2) to or for the use of any corporation organized and operated exclusively for • • • educational purposes • • •.
>
> (3) to a trustee or trustees, • • • but only if such contributions or gifts are to be used by such trustee or trustees • • • exclusively for • • • educational purposes • • •."

STATEMENT OF THE CASE

There is no dispute as to the facts of this case. The following facts were stipulated. (R. 13-18)

This is a civil action for the refund of federal estate taxes in the amount of $21,521.89 and federal income taxes for the year 1962 in the amount of $186.84 which were paid to and assessed by the Respondent acting as District Director of Internal Revenue for the District of Colorado.

Seren P. Hansen, also known as Seren Peter Hansen, died testate on May 17, 1962, a resident of Berthoud, Colorado.

On July 9, 1962, Petitioner was appointed executor of the said estate and letters testamentary were issued. Petitioner is still the duly qualified and acting executor of the said estate.

The decedent's last Will and Testament was allowed by the County Court of Larimer County, Colorado. Article Second of said Last Will and Testament provides as follows:

> I give, devise and bequeath all of my estate and property, both real and personal, of which I may die seized and possessed or to which I may be entitled at the time of my death, and wheresoever situate, to Hammer Sogn Skole Of Vrads, Herred, Aarhus Amt., Jylland, Denmark, to be used by said district in any manner it may wish for the betterment of the schools or aid to the students of said district.

On June 28, 1963, a federal estate tax return was filed for the said estate. On this return, there was reported a gross estate of $180,722.03; deductions of $15,865.22 plus an exemption of $60,000.00 were taken, leaving a net taxable estate of $104,865.81. The federal estate tax reported due on this amount ($21,521.89) was paid at the time the return was filed. No deduction was taken on the said return for bequests for charitable, educational, public or other similar purposes.

On July 9, 1963, a timely claim for refund was filed for the full amount of the federal estate tax reported on and paid with the return, namely $21,521.89. The claim for refund was not allowed and this suit for the said $21,521.89, was timely filed on March 5, 1964, pursuant to 28 U.S.C. Sec. 1340.

On April 9, 1963, an income tax return was filed on behalf of the estate, reporting taxable income for the year 1962 of $1,167.70 and a tax liability of $186.84. No deduction was taken for amounts to be paid to the Danish beneficiary. Petitioner filed a timely claim for refund which has been joined in this proceeding. Income

tax liabilities for subsequent years will be determined by this proceeding.

The Danish beneficiary under the Will is a public school district, run by public officials and constituting a political subdivision of the State of Denmark.

The United States District Court denied relief to the Petitioner and the judgment of that court was affirmed by the Court of Appeals.

REASONS FOR ALLOWANCE OF WRIT

Although applicable statutory provisions governing the income tax and estate tax questions involved in this proceeding have been in force and effect for a period of approximately fifty years, there have been no published decisions or rulings on these questions other than those involved in this proceeding. Since a large section of the population of the United States consists of immigrants and their descendants maintaining some ties to the countries of their origin, we respectfully submit that this court should settle and give proper authority as to what tax limitations are imposed on the benevolence of this large segment of the population.

We are advised, for example, that a case involving a similar estate tax issue, which will be influenced by the decision in this case, is now pending in the Court of Claims of the United States under the title of *Continental Illinois National Bank & Trust Company of Chicago, Executor* v. *The United States,* Docket No. 396-65.

The confusion existing in this area of the law is discussed at length in an article appearing in 17 Tax Law Review 41 (New York University, 1961).

A political subdivision of the State of Denmark is the real party in interest in this proceeding and the decision involves not only our relations with that foreign government but with foreign governments generally. We understand that in the case pending in the Court of Claims a political subdivision of the government of West Germany is involved. As the Court of Appeals indicated, a bequest to a properly qualified *private* foreign school would be deductible and a denial of the same treatment to a *public* foreign school is inconsistent.

In applying the broad brush of the doctrine *inclusio unius est exclusio alterius* to the decision in this case, the Court of Appeals appears to have overlooked the fact that we were *not* arguing a case involving an unrestricted bequest to a foreign government, which we admitted would be non-deductible. As Mr. Justice Holmes stated in *Lochner* v. *New York,* 198 U.S. 45 at page 76, "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise". We were arguing only that a bequest restricted to educational purposes is deductible on the theory of such decisions as that in *Matter of Hammargren,* 289 N.Y.S. 681, in which it was stated at page 683: "A municipal corporation maintaining a free school system as one of its functions is an educational corporation within the meaning of the statute, and the legacy to it is exempt from tax." See also the annotation on this subject appearing in 120 A.L.R. 1388.

The income tax issue should have been decided on the basis of statutory provisions materially different from those applicable to the estate tax issue. While we may be precluded from arguing the income tax issue because of a hasty stipulation in the trial Court, we call the attention of this Court to the fact that the decision on

the income tax issue is squarely in conflict with the 1948 decision of the Tax Court in *Estate of Tait*, 11 T.C. 731, which was acquiesced in by the Commissioner of Internal Revenue in Internal Revenue Cumulative Bulletin 1950—1 at page 5.

CONCLUSION

For the foregoing reasons, we submit that the questions presented herein call for an exercise of this Court's power of review.

Respectfully submitted,

BARNABAS F. SEARS
Counsel for Petitioner,
33 North LaSalle Street
Chicago, Illinois 60602

THOMAS J. BOODELL
THOMAS EUGENE FOSTER

Of Counsel:
BOODELL, SEARS, SUGRUE & CROWLEY